

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S CORRECTED¹ PROPOSED AGENDA
FOR THE AUGUST 24, 2016 STATUS CONFERENCE AND DISCOVERY HEARING**

The Plaintiffs' Steering Committee ("PSC") proposes the following agenda for the August 24, 2016, status conferences (before Judge Zobel at 2:00 p.m. and before Judge Boal at 11:30 a.m.). The defendants, the Post Confirmation Officer, the FDA, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

**A. MOTIONS FOR WHICH ORAL ARGUMENT IS REQUESTED DURING
THE STATUS CONFERENCE**

1. Misc. St. Thomas Plaintiffs' Motion for Hearing [Dkt. 3040]

B. REPORT TO THE COURT

1. Status of bankruptcy
 - a. Status of payments from Tort Trust
2. Status of insurance declaratory judgment actions
 - a. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.) (pending before the Tennessee Supreme Court re questions)
3. Status of Virginia Wrongful Death Settlements, and Request for Input on Distributions to PI Claimants before Final Approval of Death Claims

¹ The only change made to the previously filed agenda to correct the description in B.3 to "Virginia Wrongful Death Settlements."

4. Status of discovery

- a. Court rulings update
 - i. Order granting in part and denying in part Motion for Protective Order [Dkt. 2841] and granting in part and denying in part Motion for Protective Order [Dkt. 2906] [Dkt. 3015]
 - ii. Order granting in part and denying in part [Dkt. 3010] Joint Motion to Modify Scheduling Order at Doc 2652 SSC Cases [Dkt. 3016]
 - iii. Order granting [Dkt. 2999] PSC's Motion for Protective Order Concerning Production of Certain Information
 - iv. Order entered – Revised QPO for the Production of Certain Information Maintained by Medicaid Agencies [Dkt. 3034]
 - v. Order granting [Dkt. 2992] Motion to Modify Third Amended Protective Order of Confidentiality 814 by PSC [Dkt. 3035]
 - vi. Order entered – Fourth Amended Protective Order of Confidentiality [Dkt. 3036]
 - vii. Order re Second Amended Order Setting Discovery Deadlines [Dkt. 3042]

5. Status of litigation track

- a. Corrected Proposed Suggestion at Remand [Dkt. 3052]
 - i. Response by Advanced Pain & Anesthesia Consultants, BKC Pain Specialists and Cincinnati Pain Management Consultants, Inc., [Dkt. 3054]
 - ii. Letter/request (non-motion) [Dkt. 3052] from Counsel [Dkt. 3055]
- b. Specialty Surgery Center

- i. Order Granting [Dkt. 2882] Motion for Summary Judgment [Dkt. 3027]
- ii. Motion for [Dkt. 3015] Reconsideration [Dkt. 3031]
- iii. Opposition to [Dkt. 3031] Motion for Reconsideration [Dkt. 3053]
- c. Box Hill Cases
 - i. Notice by Consolidated Plaintiffs Joint Request for Extension of Time [Dkt. 3017]
- d. Status Of Cases Not Objecting to Remand
 - i. Notice by PSC of [Proposed] Remand or Transfer [Dkt. 3028]
 - ii. Notice by PSC of re [Dkt. 3028] Notice (Other) of Filing of [Corrected Proposed] Suggestion of Remand or Transfer [Dkt. 3052]
 - iii. Response to Court Order by Premier Defendants [Dkt. 2934]
- e. Status of Cases Objecting to Remand
 - 1. PSC's Further Response to Order to Show Cause – Suggestions re Remand [Forthcoming]
 - i. *Simas* Plaintiffs' Response to Order to Show Cause [Dkt. 2931]
 - ii. Ocean State's Response to Order to Show Cause [Dkt. 2937]
 - iii. Plaintiff's Response to Order to Show Cause for Plaintiffs that originally filed in District of Massachusetts [Dkt. 2942]
 - iv. Defendant's Response to Order to Show Cause – Fullerton Orthopedic Surgery Center [Dkt. 2945]
 - v. Response to Order to Show Cause by Advanced Pain Defendants [Dkt. 2947]
 - vi. Response by MAPS [Forthcoming]

6. Report from *Pro Se* Liaison

C. FULLY BRIEFED MOTIONS

1. Discovery-Related Motions
 - a. Motion for Reconsideration re [Dkt. 3015] Order on Motion for Protective Order by SSC [Dkt. 3031]
 - i. PSC's Response (forthcoming)
2. Other Motions
 - a. None
3. Dispositive Motions
 - a. None
4. Motions Regarding Tort Trust Payments
 - a. Motion to Compel Tort Trustee to Make timely Distributions, Terminate Negotiations with CMS, Refrain from Expanding the Obligations of Tort Trust Beneficiaries Beyond those Called for Under the Controlling Documents, and Motion to Compel Tort Trustee and PSC to Instruct CMS to Allow Trust Beneficiaries to Open Claims with CMS [Dkt. 3019]
 - i. Response by PSC [Dkt. 3043]
 - ii. Response by Tort Trustee [Dkt. 3047]
 - b. Motion for Order to Tort Trustee to Make Timely Distributions, Refrain from Imposing Unnecessary Obligations on Tort Trust Beneficiaries and for Other Appropriate Relief [Dkt. 3020]
 - i. Response by PSC [Dkt. 3043]
 - ii. Response by Tort Trustee [Dkt. 3047]
 - c. Motion for Order to Approve Agreement Between the Tort Trustee and the Centers for Medicare and Medicaid Services Regarding Resolution of Claims for Reimbursement of Health Care Costs by Lead Counsel [Dkt. 3023]
 - d. Motion to Compel Tort Trustee to Make Timely Distributions and Other Relief [Dkt. 3025]

- i. Response by PSC [Dkt. 3043]
- ii. Response by Tort Trustee [Dkt. 3047]

5. Orders re Tort Trust Payments

- a. Order re Motions to Compel [Dkt. 3041]

D. BRIEFING IN PROGRESS

- 1. Discovery-Related Motions
 - a. None
- 2. Other Motions
 - a. None
- 3. Dispositive Motions
 - a. None

E. MOTIONS STAYED AS A RESULT OF DKT. 2898

- 1. Saint Thomas Entities' Motion for Partial Summary Judgment on Putative Claims for Actual Agency and Direct Liability [Dkts. 2743, 2744, 2745]
 - a. PSC Opposition [Dkts. 2818, 2819, 2820]
 - b. Saint Thomas Entities' Reply [Dkt. 2854]
- 2. Tennessee Clinic Defendants' Motion to Compel David Kessler Deposition Completion and Mandate for Direct Responses [Dkts. 2763, 2766] (oral argument waived)²
 - a. Tennessee Clinic Defendants' Notice of Manual Filing of Exhibits 1-4 [Dkt. 2773]
 - b. PSC Opposition [Dkt. 2825]
 - c. Tennessee Clinic Defendants' Amended Reply [Dkt. 2838]
- 3. Nashville Healthcare Defendants' Motion to Strike Matthew Lee as Case-Specific Expert [Dkts. 2769, 2770]
 - a. Plaintiffs' Consolidated Opposition [Dkt. 2799]
- 4. PSC Motion to Quash and for Protective Order Relating to David Kessler

² See Transcript of April 14, 2016 Status Conference, 22:17-23:10.

[Dkts. 2815, 2816]

- a. STOPNC Response [Dkt. 2837]
5. PSC Motion to Strike Supplemental Mixon Report [Dkts. 2829, 2830]
(oral argument waived)
 - a. STOPNC Defendants' Opposition [Dkt. 2845]
 - b. PSC Reply [Dkt. 2863]
 - c. Order [Dkt. 2891]
 - d. Joint Status Report Regarding Motions to Strike Matthew Lee as Case- Specific Expert and Bill Mixon's Supplemental Report by Vaughan A. Allen, M.D., John Culclasure, Howell Allen Clinic, A Professional Corporation, Saint Thomas Outpatient Neurosurgical Center, LLC, Debra Schamberg [Dkt. 2900]
6. STOPNC Defendants' Notice of Filing Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkt. 2874]
(ostensibly applies to Bellwether cases)
7. PSC Motion for Leave to File Motion for Partial Summary Judgment on Comparative Fault Defenses Regarding Governmental Entities [Dkt. 2862]
 - a. STOPNC Defendants' Response [Dkt. 2868]
 - b. Saint Thomas Entities' Response [Dkt. 2873]
8. STOPNC Defendants' Motion for Leave to File Motions for Summary Judgment [Dkt. 2867]
 - a. Saint Thomas Entities' Notice of Joinder [Dkt. 2880]
9. STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-121 [Dkts. 2869, 2870]
10. STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkts. 2871, 2872]
11. Saint Thomas Entities' Motion for Leave to File Motion for Partial Summary Judgment on Claims for Apparent Agency [Dkt. 2878]
12. Saint Thomas Entities' Motion for Leave to File Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Dkt. 2879]
 - a. Stipulation/Correction re Motion for Leave to File Motion to

Dismiss or, in the Alternative, Motion for Summary Judgment
[Dkt. 2924]

13. PSC's Motion for Partial Summary Judgment [Dkt. 2887]
14. PSC's Motion for Extension of Time to June 10, 2016 to Complete Discovery Deadlines Set in Dkt. 2827 [2902]
15. Notice of Appeal of Magistrate Judge's Decision by Saint Thomas Entities [Dkt.2908]
16. Motion for Joinder in the Saint Thomas Entities Objections to Order Denying Motion to Dissolve Protective Orders and Lift Stays and Request for Ruling on Omnibus Motion at Doc. 2908 [Dkt. 2911]

F. FUTURE STATUS CONFERENCES

1. September 28, 2016
2. November 3, 2016

Dated: August 23, 2016

Respectfully submitted,

/s/ Kristen A. Johnson
Thomas M. Sobol, BBO # 471770
Kristen A. Johnson, BBO # 667261
HAGENS BERMAN SOBOL SHAPIRO
LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
(617) 482-3700
tom@hbsslaw.com
kristenj@hbsslaw.com

*Plaintiffs' Lead Counsel on behalf of the
Plaintiffs' Steering Committee*

CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: August 23, 2016

/s/ Kristen A. Johnson
Kristen A. Johnson (BBO# 667261)